LINMAR PETROLEUM CO.

IBLA 99-114 Decided August 3, 2000

Appeal from a decision of the Deputy Commissioner of Indian Affairs, Bureau of Indian Affairs, partially denying an appeal of a Minerals Management Service order requiring the payment of additional rentals and late payment charges on allotted Indian oil and gas leases. MMS-97-0193-IND.

Affirmed as modified.

1. Contracts: Construction and Operation: General Rules of Construction--Indians: Leases and Permits: Rental Rates--Indians: Mineral Resources: Oil and Gas: Allotted Lands

   In interpreting lease provisions, the Board attempts to determine and give effect to the intent of the parties to the lease as manifested by the language used therein. Where the escalated rental schedule incorporated into allotted Indian oil and gas leases does not specify that rentals freeze as of the date of first production but simply states that "the procedures covering the payment of such fees and the due date thereof shall operate in accordance with past practices," MMS properly requires the lessee to calculate rentals based on the escalated rates.

2. Estoppel--Indians: Leases and Permits: Rental Rates--Indians: Mineral Resources: Oil and Gas: Allotted Lands

   A claim of estoppel against the United States will be rejected in the absence of affirmative misconduct in the nature of an erroneous statement of fact in an official written decision or if the effect of allowing the estoppel would be to grant a right not authorized by law. Reliance on incomplete or inaccurate information provided by Federal employees cannot create any rights not authorized by law.

3. Federal Oil and Gas Royalty Management Act of 1982: Generally--Indians: Leases and Permits: Rental Rates--Indians: Mineral Resources: Oil and Gas: Allotted Lands

MMS properly assesses late payment charges on underpaid escalated rental payments.

APPEARANCES: L.M. Rohleder, Vice President of Managing General Partner, Linmar Petroleum Company, Denver, Colorado, for appellant; Howard W. Chalker, Esq., and Geoffrey Heath, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Linmar Petroleum Company (Linmar) has appealed that part of an October 5, 1998, decision of the Deputy Commissioner of Indian Affairs (Deputy Commissioner), Bureau of Indian Affairs (BIA), denying its appeal of a Minerals Management Service (MMS) order requiring the payment of additional rentals due on four allotted Indian oil and gas leases and assessing late payment charges on the underpaid rentals.

In 1984, BIA issued eight allotted Indian oil and gas leases containing escalated rental clauses to Linmar's predecessor-in-interest, Linmar Energy Corporation, with payment of signing bonuses to the Indian lessors at the time of lease execution. Production on each of the leases, all of which are located in either Uintah or Duchesne Counties, Utah, began in 1985. Linmar sold the leases to Coastal Oil and Gas Corporation (Coastal) effective July 1, 1994.

The four leases at issue in this appeal, Lease Nos. 509-004146-0, 509-004147-0, 509-004148-0, and 509-004149-0, each contain the following rental schedule:

RENTAL SCHEDULE FOR ALL LANDS LEASED WILL BE AS FOLLOWS:

Year	$Minimum or Percentage of bonus; whichever is greater:
1	$5.00/acre or 3% of bonus/acre
2	$7.50/acre or 6% of bonus/acre
3	$10.00/acre or 9% of bonus/acre
4	$12.50/acre or 15% of bonus/acre
5	$15.00/acre or 20% of bonus/acre and thereafter.

This rental format shall control regardless of the length of the primary term of the lease. The procedures covering payment of such fees and the due date thereof shall operate in accordance with past practices (see rental schedule section of the applicable lease forms).

The rental schedule included in the other four leases owned by Linmar, Lease Nos. 509-004270-0, 509-004271-0, 509-004272-0, and 509- 004304-0, provides:

RENTAL SCHEDULE

Lessee shall pay, in advance, beginning with the date of approval by the Superintendent, the following annual per acre rental:

Year	$Minimum of [sic] Percentage of bonus; whichever is greater:
1	$5.00/acre or 3% of bonus/acre
2	$7.50/acre or 6% of bonus/acre
3	$10.00/acre or 9% of bonus/acre
4	$12.50/acre or 15% of bonus/acre
5	$15.00/acre or 20% of bonus/acre

Rental shall be credited on production royalty for each month royalty is paid.

After production in paying quantities is established, if royalty in any month is less than the aforesaid rental schedule, an amount equal to said schedule, determined as of the date of first production, will be paid monthly as rental, giving full credit for royalty paid.

In order to avoid premature abandonment of the well, and the loss of the resource, a reduction in rental as a floor on the royalty paid can be negotiated upon application of the lessee with satisfactory justification.

Linmar paid annual rentals each year on the leases based on the escalating bonus percentages established in the rental schedules until 1990, by which time it was paying rentals equal to 20 percent of the orig-inal bonus per acre, the amount specified in the rental schedules as due for the 5th year and beyond. In early 1990, Linmar had a series of conversations with MMS and Ute Distribution Corporation employees concerning whether the lease rentals had stopped escalating upon first production in 1985, the 2nd year of the leases. In 1991, MMS purportedly "inadvertently" billed Linmar for rentals calculated at the lesser rate in effect in 1985, the year of first production, i.e., 6 percent of the bonus per acre, and Linmar began paying rentals on that basis.

In early 1991, MMS assessed Linmar an additional $12,076.80 in rentals for allotted Lease No. 509-004149-0 for the 1990 and 1991 rental years. 1/ Linmar appealed this bill, arguing that, based on past

1/ The case file does not contain a copy of this bill.

practices and the parties' intent, the rental rate froze at the rate in effect on the date of first production. In a letter dated March 12, 1992, MMS advised Linmar that it had reviewed and adjusted the challenged invoice in accordance with the documentation submitted with the appeal and would credit $12,076.80 from the invoice. MMS further stated that, because it had resolved all matters, it considered Linmar's appeal to be closed.

Linmar continued to pay rentals at the rate in effect as of the date of first production. 2/ On July 22, 1997, MMS issued a demand for payment, finding that, during the period 1987 through 1994, Linmar had failed to properly pay annual rental based on the escalated rental schedules attached to the eight allotted leases. MMS assessed Linmar $224,627.71 in underpaid rentals as calculated in an enclosed bill for collection.

Linmar appealed the demand letter and bill for collection, again asserting that both the language of the leases and the intent of the parties clearly envisioned that the escalation of the rentals would cease as of the date of first production. Linmar claimed that, at the time of lease issuance, when the lessees had objected to the escalating rentals on the ground that they would make production of oil and gas pre-maturely uneconomic, the Ute Tribal Council had assured Linmar that the escalated rentals could be negated by promptly drilling and producing from the leases. The company added that it had also been advised by an MMS employee in 1990 that it would be subject to fines and penalties if it overpaid rentals, as well as if it underpaid rentals. Linmar maintained that the language of the leases coupled with the verbal assurances it had received from both MMS and the Tribal Council about the correct payment of rentals established that it had correctly paid rentals for the leases.

In her October 5, 1998, decision, the Deputy Commissioner denied in part and granted in part Linmar's appeal. She delineated two issues presented by the appeal: (1) whether the terms of the rental schedules, which were part of the allotted Indian leases, froze the escalating rentals at the rate in effect during the year of first production; and (2) to what extent did inconsistent or erroneous instructions by MMS and BIA modify the rental schedules. She found that the rental schedule included in Lease Nos. 509-004270-0, 509-004271-0, 509-004272-0, and 509- 004304-0 explicitly stated that, once production in paying quantities had been achieved, rental rates were to be determined as of the date of first production. She, therefore, granted Linmar's appeal as to those leases, and they are not at issue in this appeal.

2/ MMS appears to have billed Linmar inconsistently for rental on the leases, with some bills based on the rental rate in effect at the time of first production and others based on the 5th year escalated rate. The record, however, does not contain copies of the rental billings for the eight allotted leases other than those submitted by Linmar.

As to Lease Nos. 509-004146-0, 509-004147-0, 509-004148-0, and 509- 004149-0, the Deputy Commissioner found that the escalated rental schedule incorporated into those leases contained no reference to the rate in effect during the year of first production. She determined that no justification existed for interjecting a rental escalation limitation into those leases given the absence of such a restriction in the express contractual terms. She rejected Linmar's contention that the leases' reference to "past practices" evinced the parties' intention to restrict the rental rate to that in effect during the year of first production, pointing out that Linmar had offered no specific evidence that the parties had meant "past practices" to include calculating rentals in a manner directly conflicting with the express lease terms. She noted that the term "past practices" expressly referred only to the procedures covering payment of rental fees and their due date, not escalating rentals. Accordingly, the Deputy Commissioner found no basis for imposing a restriction on the rental obligation that was absent from the leases themselves.

The Deputy Commissioner determined that inconsistent or erroneous instructions by BIA and MMS, upon which Linmar assertedly relied, did not modify the express terms of the rental schedule. She concluded that, because the rights of the United States could not be waived by past practices of its employees and reliance on erroneous or incomplete advice from Government employees could not create rights not authorized by law, neither Linmar's extensive oral communications with and instructions from BIA and MMS, nor the March 12, 1992, withdrawal of the bill for additional rentals for Lease No. 509-004149-0 precluded MMS from construing the operative lease language and enforcing the terms of the contracts on the basis of their express provisions. She, therefore, affirmed MMS' interpretation of the escalated rental schedule found in Lease Nos. 509-004146-0, 509- 004147-0, 509-004148-0, and 509-004149-0 and denied that portion of Linmar's appeal.

As to the amount of additional rentals now due, the Deputy Commissioner stated:

> In accordance with the interpretation of the rental provisions set forth in this decision, [MMS] has recalculated the amount of rentals underpaid during the applicable period for the leases * * * to be $69,005.46. If the Appellant were now ordered to pay the full $69,005.46 in additional rentals, this would create overpayments on the leases since the Appellant already paid production royalties on the leases. For those leases where there were not remaining royalties, the Appellant would be unable to recoup rent from these royalties because it no longer owns the leases.
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> On this basis, [MMS] has recalculated the combined royalty and rental obligations for the applicable years, taking

into account the amount of production royalties that the Appel-lant already paid but would not have been required to pay had it paid rentals properly, and found them to be underpaid by $25,630.56.

(Decision at 12.)

She further advised Linmar that late payment charges would be billed upon receipt of the rental payment. She explained that the late payment charges on the $25,630.56 would be calculated from the date the additional rentals should have been paid to the date of payment, and that late payment charges on the $43,374.90 in rentals no longer due because they could have been applied to Linmar's royalty obligation would be computed from the date each rental should have been paid to the date it could have been applied to the royalties due in the lease year.

On appeal, Linmar objects to both the interpretation of the escalated rental schedule found in Lease Nos. 509-004146-0, 509-004147-0, 509- 004148-0, and 509-004149-0, and the assessment of late payment charges. Linmar contends that the disputed clause in the rental schedule refers to the freezing of rental escalation upon first production, not the method of payment. Linmar asserts that the specified procedures are those determining the extent of the escalation and the alluded to "past practices" are those providing for cessation of rental escalation at first production. Linmar asserts that BIA, MMS, the Ute Tribe, and the Ute Distribution Cor-poration all confirmed that lease rentals stopped escalating once production was obtained, a conclusion supported by the longstanding practice of fixing rental amounts upon commencement of royalty payments. Limiting the escalation of rental payments in accordance with past practices does not conflict with the express terms of the rental schedule, Linmar submits, because all the parties involved with the leases agreed that rentals did not increase after the date of first production. Linmar reiterates that, at the time of lease issuance, Governmental and Tribal representatives had assured it that the escalated rentals would be negated by promptly drilling and producing from the leases, and that MMS had threatened to assess fines if rentals were incorrectly overpaid. In any event, Linmar insists that setting rentals at the amount specified at the time of first production would be in the best interest of the Indian lessors because it would prevent the early abandonment of wells based on economics.

Linmar maintains that, MMS' position to the contrary notwithstanding, the lease rental provisions are ambiguous and subject to interpretation. It contends that once MMS construed the language as freezing rental amounts at the level in effect at the time of first production, that construction became binding. Linmar asserts that it properly relied on that interpretation in deciding the economic viability of continuing lease operations, and that the Government should be estopped from applying the changed construction of the rental escalation clause because Linmar cannot now rescind those economic decisions or collect additional moneys from the other working interest owners.

Alternatively, Linmar argues that no late payment charges should be assessed on the underpaid rentals and that, if billed, those charges should not include time beyond July 1, 1994, the date it conveyed all of its interests in the leases to Coastal. Linmar insists that charging interest on amounts that could have been offset by royalties is unconscionable, pointing out that if it had known the rentals were going to continue to escalate, it most likely would have abandoned the wells and relinquished the leases and no rentals would have been due. Requiring interest payments on amounts offset by royalties simply because they were not timely offset is unreasonable, Linmar submits, especially in light of MMS' refusal to accept overpaid rentals. Linmar similarly objects to the assessment of late payment charges on underpaid rentals not offset by royalties because, had it been timely billed for the escalated rentals, it would either have paid the rentals or given up the leases.

In response, MMS contends that the leases at issue do not cap the escalating rentals as of the year of first production, and that it therefore was required to assess the additional rentals. MMS asserts that the reference to past practices in the rental schedule does not relate to the determination of the extent of escalation or the amount due but rather to the proper type of payment instruments, the appropriate person to receive the payment, and the offsetting of rentals by royalties. MMS notes that if the drafters had intended to cap rentals as of the year of first production, they could have expressly so stated as they did in the leases no longer at issue. MMS submits that the contested leases must be enforced according to their own terms which require compliance with the escalating rental schedule.

Nor, according to MMS, does the doctrine of estoppel or other equitable principles prevent MMS from requiring the payment of rentals based on the lease rental schedule. Given the lack of any legal basis to cap escalating rentals, MMS argues that Linmar's reliance on previous interpretations that the rental stopped escalating during the year of first production does not prevent MMS from now correcting that error because estoppel does not lie where the effect of such action would be to grant a right not authorized by law. MMS maintains that not only does reliance on erroneous information by a Government employee not create rights not authorized by law, but also that MMS statements cannot negate specific lease language. MMS concludes that the leases' escalated rental payment requirement cannot be abrogated by unauthorized statements that rentals were capped as of the date of first production.

MMS insists that, under the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 1721(a) (1994), and the applicable regulations, 30 C.F.R. § 218.54(a) and 218.102(b), Linmar's failure to timely pay the rentals due triggered MMS' duty to assess late payment charges to compensate the lessors for the lost time value of the money due. Linmar's equitable attacks against the late payment charges fail, MMS maintains, because

the statute and regulations mandate those charges, and MMS is bound to follow the statute and duly promulgated regulations.

[1] The Board's task when faced with the construction of a lease is to determine and give effect to the intent of the parties as disclosed by the language used, construing the document as a whole and ascribing to the contract language its ordinary and commonly accepted meaning. Benson-Montin-Greer Drilling Corp., 146 IBLA 387, 398 (1998); BHP Minerals International, Inc., 139 IBLA 269, 305-306 (1997); Asarco Inc., 116 IBLA 120, 126-27 (1990), and cases cited. The parties' intent should be ascertained from the words of the contract, when clear and explicit, as long as to do so would not lead to absurd consequences. Benson-Montin-Greer Drilling Corp., supra; BHP Minerals International, Inc., 139 IBLA at 306; Exxon Company, U.S.A., 118 IBLA 30, 36 (1991).

The disputed lease rental schedule language states: "The procedures covering payment of such fees and the due date thereof shall operate in accordance with past practices (see rental schedule section of the applicable lease forms)." Unlike the language in the four allotted leases no longer at issue, this language does not explicitly cap escalated rentals at the rate in effect in the year of first production. In fact, the contested rental schedule contains no reference at all to the freezing of escalated rentals. Linmar's attempt to expand the meaning of "procedures for payment of such fees and the due date thereof" to include the cessation of rental escalation fails because of the absence of any foundation for that interpretation in the language utilized. Thus, we find that MMS properly construed the rental schedule as requiring the payment of the specified escalating rental amounts regardless of the date of first production.

[2] Linmar argues that, even if the rental schedule does not provide for the capping of rentals at the rate in effect at the time of first production, MMS should nevertheless be precluded from requiring Linmar to pay the proper escalated rentals because Linmar relied to its detriment on statements from MMS, BIA, and Ute Tribal officials assuring Linmar that the rentals were so capped. This argument is essentially one of estoppel.

The Board has adopted the elements of estoppel set forth in United States v. Georgia-Pacific Co., 421 F.2d 92, 96 (9th Cir. 1970), as the initial test in determining estoppel questions presented to the Board. United States v. Grooms, 146 IBLA 289, 293-94 (1998); United States v. White, 118 IBLA 266, 303, 98 I.D. 129, 149 (1991). The four elements of estoppel set forth therein are (1) the party to be estopped must know the facts; (2) that party must intend that its conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the facts; and (4) the party asserting estoppel must rely on the former's conduct to its injury.

In addition, we have adopted the rule of numerous courts that estoppel is an extraordinary remedy, especially as it relates to the public lands. Harold E. Woods, 61 IBLA 359, 361 (1982). Estoppel against the Government in matters concerning the public lands must be based on affirmative misconduct, such as misrepresentation or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978); D.F. Colson, 63 IBLA 221 (1982); Arpee Jones, 61 IBLA 149 (1982). Oral statements by Departmental employees are insufficient to support a claim of estoppel; the erroneous advice upon which reliance is predicated must be in the form of a crucial misstatement in an official decision. See Santa Fe Minerals, Inc., 145 IBLA 317, 324 (1998); Martin Faley, 116 IBLA 398, 402 (1990), and cases cited therein. Furthermore, estoppel will not lie if the effect of such action would be to grant a person an interest not authorized by law. Alfred G. Hoyle, 123 IBLA 194A, 194V, 100 I.D. 34, 44-45 (1993), aff'd 927 F. Supp. 1411 (1996); aff'd, 129 F.3d 1377 (10th Cir. 1997).

In this case, Linmar states that it relied upon oral information and directions from MMS, BIA, and Tribal entities, not written misstatements in official decisions. In fact, although Linmar requested written confirmation of the proper basis for computation of the escalated rentals in early 1990, none was forthcoming. 3/ Linmar's confusion over the escalation of the rentals is understandable given the two very different rental schedules controlling the rental computations. However, reliance on erroneous information given by Departmental employees cannot create rights not authorized by law. Golden Arc Mining & Refining Inc., 133 IBLA 90, 93 (1995), and cases cited; see also 43 C.F.R. § 1810.3(c). Nor do MMS instructions negate the specific lease language controlling rental escalations. See Earth Sciences, Inc., 123 IBLA 369, 371 (1992).

Estoppel does not lie in this case because the erroneous information Linmar relied upon did not consist of a crucial misstatement in an official decision and allowing Linmar to avoid its contractual obligation to pay rentals based on the escalated rental schedule would grant it a right not authorized by law.

Nevertheless, we modify the Deputy Commissioner's decision to the extent it upheld MMS' assessment of additional rentals for the 1990 and

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3/ The case file contains an Apr. 16, 1985, letter from the Superintendent, Uintah and Ouray Agency, BIA, to Chevron, U.S.A., submitted by Linmar, which states that "the rental rate is to be fixed at the amount required for the year production is established." This letter, however, construes the escalated rental schedule which explicitly provided for the freezing of rental escalation, not the schedule at issue here. The record also includes copies of demands for payment of additional rental based on the uncapped rental which Linmar claims were informally resolved with MMS agreeing that the rentals were overcharged. The leases identified in those demands also appear to be those with the rental schedule specifically capping the rental rate.

1991 lease years on Lease No. 509-004149-0. As noted above, Linmar formally appealed the 1992 MMS bill for those additional rentals, and, by letter dated March 12, 1992, MMS effectively granted that appeal, stating that it had "reviewed and adjusted the invoice[] in accordance with the documents submitted in your appeal[]. Because we have resolved all matters, we consider your appeal[] closed." Although incorrect, this decision, which was issued as a result of a formal appeal, appeared to settle the question of whether Linmar owed additional rentals for the 1990 and 1991 lease years on Lease No. 509-004149-0, and it would be unfair to now penalize Linmar for acting in accordance with that written decision. Therefore, we find that Linmar is not liable for additional rental for the 1990 and 1991 lease years on Lease No. 509-004149-0, and modify that aspect of the Deputy Commissioner's decision.

[3] Although Linmar objects to the imposition of late payment charges in this case, the applicable regulations require the assessment of interest on unpaid and underpaid amounts from the date the amounts are due until the date paid. See 30 C.F.R. § 218.54(a); 30 C.F.R. § 218.102(a), (b). Moreover, in Amax Land Co. v. Quarterman, 181 F.3d 1357, 1362 (D.C. Cir. 1999), a case involving a challenge to an order to pay interest on late coal lease payments, the court stated that the Debt Collection Act, 31 U.S.C. § 3717(a)(1) (Supp. II 1996) "'changed the common law' by making mandatory the federal government's common law right to assess interest on private persons' overdue obligations to the government. United States v. Texas, 507 U.S. 529, 534, n.4 (1993), 113 S.Ct. 1631, 123 L.Ed.2d 245 (1993)." Such interest charges reimburse the Government for the time value of moneys due but not yet paid. Oryx Energy Co., supra; Santa Fe Energy Co., 110 IBLA 209, 211 (1989); Cities Service Oil & Gas Corp., 104 IBLA 291, 295 (1988); Sun Exploration & Production Co., 104 IBLA 178, 186-87 (1988); Peabody Coal Co., 72 IBLA 337, 348 (1983).

Linmar contends that it would be inequitable to assess it late payment charges because it paid rentals in accordance with MMS instructions, and that, in any event, no interest should be imposed for the period after its July 1, 1994, sale of the leases. The crucial fact, however, is that Linmar did not timely pay the required rental amounts, and MMS is therefore authorized to assess late payment charges. See Phillips Petroleum Co., 121 IBLA 278, 283 (1991), vacated in part on other grounds and remanded, 121 IBLA 285A (Feb. 3, 1994). Linmar's sale of the leases does not negate its obligation to pay the underpaid rentals or fix the amount of the interest due on the late payments; only MMS' receipt of the rental amounts due stops the accrual of interest.

To the extent not specifically addressed herein, Linmar's other arguments have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed as modified.

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Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

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James P. Terry
Administrative Judge